City of Palo Alto (ID # 9804)

City Council Staff Report

Report Type: Action Items **Meeting Date: 1/28/2019**

Summary Title: Approval to Negotiate Agreements for Purchase of Media Center Building Using PEG Fees

Title: Request for Approval to: 1) Negotiate Agreements With Midpeninsula Community Media Center (Media Center) to Purchase its Building at 900 San Antonio Road, Using PEG Fees; and 2) Negotiate a new Agreement Between the City of Palo Alto (on Behalf of the Joint Powers) and the Media Center for Public, Education, and Government (PEG) Access Channel Support Services; Approval of Amendment Number 2 to Agreement Number C12142180 Between the City of Palo Alto (on Behalf of the Joint Powers) and the Media Center to Extend the Existing Agreement to June 30, 2019

From: City Manager

Lead Department: Administrative Services

Recommendation

Staff recommends that the City Council:

1) Direct staff to negotiate agreements (real estate purchase and building use) to purchase the Media Center's building at 900 San Antonio Road, using cable television public, education and government (PEG) fees.
2) Direct staff to negotiate a new agreement between the City of Palo Alto, on behalf of the Joint Powers, and the Media Center for PEG access channel support services that will conform to the terms of the real estate purchase and building use agreements.
3) Approve Amendment No. 2 to Agreement No. C12142180 between the City of Palo Alto, representing the Joint Powers communities, and the Media Center (attached as Attachment A) to extend the existing agreement for 6-months to June 30, 2019, to allow time to complete the new arrangement for the use of PEG fees.

Background

In 1983, a Joint Powers Agreement (JPA) was entered into by Palo Alto, East Palo Alto, Menlo Park, the Town of Atherton and portions of San Mateo and Santa Clara counties for the purpose of obtaining cable television services within these jurisdictions. The JPA gives Palo Alto the sole authority to administer cable franchises and act on behalf of the JPA jurisdictions. Cable franchise holders provide various forms of compensation (franchise fees and PEG fees) for the use of the JPA's public rights-of-way.

The City of Palo Alto's Cable Television Ordinance provides that the City may designate a nonprofit access management entity (Access Corporation) to operate the JPA's PEG channels and provide PEG access support services. The Media Center (formerly the Mid-Peninsula Access Corporation) has served in this capacity since the early 1990's. In this role, the Media Center administers the JPA's seven local PEG channels, broadcasts local community programs, provides gavel-to-gavel coverage of local government meetings, offers video production classes and workshops to community members, and provides local election coverage. Palo Alto forwards all PEG fee revenues received by JPA members from franchise holders (currently AT&T and Comcast) to the Media Center in support of these services. PEG fees total approximately $325,000 on an annual basis (or 88 cents per subscriber per month).

In 2000, as part of the sale of Palo Alto's locally owned cable system, Cable Co-op, to AT&T, a $17 million charitable donation was given to the Access Corporation (the donation amounted to $10 million after tax). The Access Corporation used a portion of this donation (approximately $4 million) to purchase and upgrade a video production and training facility located at 900 San Antonio Road in Palo Alto to replace the facility previously provided by Cable Co-op. The remainder of the donation monies remain in Media Center reserves as well as fund a portion of the Media Center's annual operating budget, in amounts ranging from $150,000 to $900,000 in recent years due to PEG revenue restrictions.

The federal Cable Act restricts the use of PEG fee revenue to capital expenditures. In 2007, the California Digital Infrastructure and Video Competition Act (DIVCA) went into effect. DIVCA gave cable operators the option of switching from locally negotiated to state-issued franchises. Both of the JPA's cable operators (Comcast and AT&T) now have state-issued franchises. This change eliminated the means through with which localities, like the JPA, could protect PEG fees from the federal Cable Act's capital cost limitation.

In May 2016, the Palo Alto Auditor issued the Cable Franchise and PEG Fee Audit, which included a finding that the Media Center had been using PEG fees for operating expenses, rather than solely for capital expenses, which is the only use permitted by federal law (the full audit can be found here: www.cityofpaloalto.org/civicax/filebank/documents/54299). The Council directed staff to work with the Media Center to correct this practice, preferably in a way that enables the Media Center to continue operations. The most viable option involves the JPA using PEG fees to purchase the Media Center's video production and training facility at 900 San Antonio Road. This will ensure that PEG fees are used for capital costs as required by federal law, while providing the Media Center a stream of funds to close the gap in its operating budget for a term of years that will be determined in further negotiations (likely 20 years or more).

Discussion

The City has reached tentative agreement with the Media Center, subject to Council direction, on many of the key terms of a potential facility purchase arrangement, as described below:

1. The JPA and the Media Center will agree on a purchase price for the building (land and facility) based on a recent market appraisal obtained by the Media Center, that is currently being updated, using a firm approved by the City to incorporate several unsolicited offers to purchase the facility, and a City staff preliminary market analysis.
2. The JPA will use PEG fees to pay the Media Center for the building over time, by making a series of fixed installment payments. The parties will negotiate the number and amount of the installment payments, and the term of the agreement, after the purchase price of the building has been finalized.
3. The parties will enter into a Real Estate Purchase Agreement to document the terms of the building purchase. The building title will pass from the Media Center to the JPA at the inception of the building purchase arrangement.
4. The parties will also enter into a Building Use Agreement. In return for the Media Center's continued provision of PEG access support services and use of the building for that purpose, the Media Center will occupy the building on a rent-free basis. The Media Center will be responsible for taxes, insurance, maintenance/repair, and capital costs on the property.
5. The Media Center will have exclusive possession of the building, and the building's primary use will be PEG activities. When not needed for PEG purposes, the Media Center may use otherwise-idle studio space, meeting space, and production facilities and equipment for non-PEG activities within the ambit of the Media Center's non-profit charter, including fee-bearing professional services. However, PEG-related activities shall predominate, and the parties will agree to cap the Media Center's non-PEG activities in the building in terms of time used, amount of space used, and/or revenue value of PEG versus non-PEG activities. The income from all of the Media Center's non-PEG activities in the building shall be used exclusively to finance the Media Center's PEG services.
6. After the Real Estate Purchase Agreement and Building Use Agreement are finalized, the JPA and Media Center will negotiate a new PEG Access Support Services Agreement that conforms to the terms of the Real Estate Purchase Agreement and the Building Use Agreement. The term of the PEG Access Support Services Agreement will be consistent with the term of the Real Estate Purchase and the Building Use Agreements (expected to be 20 years or more).
7. The Real Estate Purchase Agreement will reflect that on completion of all scheduled payments, the JPA's payments to the Media Center for the building will cease. The JPA will be obligated to use and maintain the building for PEG purposes for the life of the asset.
8. The JPA and Media Center may agree to meet and confer if there are changes in the legal environment or commercial cable market that significantly impact the existence or amount of PEG fees.

The building purchase arrangement described above would allow the Media Center to continue operations for many years to come, thus preserving a nonprofit community service organization that is greatly valued by the JPA communities. In addition, the JPA communities would own a facility that is dedicated to PEG purposes. Staff seeks Council direction on this proposed arrangement and recommends that the City proceed to negotiate the necessary agreements for the purchase of the Media Center building.

Staff also recommends that the Council approve a 6-month extension to the existing PEG Access Support Services Agreement between the City of Palo Alto, representing the Joint Powers communities, and the Media Center to allow time to finalize the Real Estate Purchase and Building Use Agreements, and negotiate a new conforming PEG Access Support Services Agreement.

Staff is in the early stages of vetting the building purchase with the other JPA jurisdictions. Staff plans to obtain JPA endorsement of the arrangement prior to returning to Council for approval of the Real Estate Purchase Agreement, the Building Use Agreement, and the new PEG Access Services Agreement.

Risks

The amount of PEG fee revenue received by the JPA on an annual basis has remained fairly stable over the years, ranging from $313,000 to a high of $347,000 (in calendar year 2014) over the past decade. However, the traditional cable market has started to decline as subscribers "cut the cord" and move away from cable to cheaper Internet delivered services. This trend is expected to accelerate in coming years. Since broadband services are not subject to PEG fees, this exodus will impact PEG revenue.

Also, it is possible that future changes in the legal environment could result in reductions or elimination of PEG revenue. If legal changes or changes in the commercial cable market reduce or eliminate PEG revenue in the future, PEG funds may not be available or sufficient to make the fixed installment payments to the Media Center. In that case, JPA jurisdictions may be obligated to identify alternative funding sources for the building purchase payments, or the parties could renegotiate the terms of the building purchase arrangement.

On the other hand, it is possible that federal law could liberalize, allowing PEG revenues to be used for operating as well as capital costs. In that case, the Media Center may seek a term allowing them to repurchase the building. Contract terms regarding these contingencies will need to be negotiated between the JPA and the Media Center, in close consultation with legal counsel to ensure compliance with federal law.

There are also inherent risks and responsibilities in owning the Media Center's building. Following the audit in 2016, PEG fees have been placed in a restricted account managed by the Media Center while the parties work-out a new arrangement for the use of these funds. This account currently totals approximately $700,000. A portion of this money could be used to establish a reserve to cover unanticipated building-related capital needs. This reserve could also be used to offset potential reductions in PEG revenue for a period of time, similar to a rate stabilization reserve.

The City of Palo Alto maintains a Cable Agency Fund that holds proceeds from JPA cable audit settlements. The JPA has established a Cable Fund reserve policy that stipulates that as franchise agreements are audited, receipts are deposited in this fund. Historically, these funds have been used to support the JPA's institutional network (a fiber network that connects local schools, and government entities). However, as this project is nearing completion, these funds could be available to cover other building contingencies (as of June 30, 2018 these funds totaled $691,816).

Alternatives

Staff has considered two alternatives to the building purchase arrangement. The first option involves allocating a portion of the JPA jurisdictions' 5% franchise fees to the Media Center. Currently, those fees are deposited into the JPA jurisdictions' General Funds. Using franchise fees for Media Center operations is not desirable because it results in a reduction of General Fund revenues for each JPA jurisdiction. To cover the Media Center's entire operating budget gap, each JPA jurisdiction would need to allocate the following amount to the Media Center on an annual basis: Palo Alto $157,000; Menlo Park $88,000; East Palo Alto $26,000; Atherton $32,000; Stanford $17,000; San Mateo County $5,000.

It is important to note that the FCC is considering adopting new rules that could reduce franchise fee revenue in the future. The FCC has proposed treating the value of all non-monetary cable franchise obligations, such as the JPA's seven local PEG channels, as "franchise fees" counted against the 5 percent franchise fee cap. The City has joined a coalition of local governments to oppose the FCC's proposal. It is unknown whether or not the FCC will upend decades of consistent treatment of what counts toward the franchise fee cap. Given the JPA's reliance on franchise fees as a source of General Fund revenue and the pending FCC threat, it is unlikely that the JPA would be willing to allocate a portion of its franchise fee revenue to the Media Center.

The second alternative involves using Cable Fund reserves to defray a portion of the Media Center's operating costs for several years. This is a short-term solution since Cable Fund resources are limited (available balance of $691,816 as of June 30, 2018) and there is no on-going source of revenue to replenish Cable Fund reserves.

Resource Impact

The JPA receives PEG fee revenue of approximately $325,000 annually and franchise fee revenue of approximately $1.8 million annually from cable franchise holders. The PEG fee revenue has been held in a separate account pending direction on the building purchase option. This report recommends dedicating future PEG fee revenue to the purchase of the Media Center building. Franchise fee revenue would continue to be distributed to JPA members based on the percentage of cable subscribers in each jurisdiction (after deducting the City's administrative expenses).

Policy Implications

The recommendations in this report are consistent with Council direction to restrict the use of PEG fees to capital costs while preserving the Media Center's operational budget funding.

Attachments:

- Attachment A: Amendment No. 2 to Agreement No. C12142180

Attachment A

AMENDMENT NO. 2 TO CONTRACT NO. C12142180
BETWEEN THE CITY OF PALO ALTO ON BEHALF OF THE JOINT POWERS AND THE MIDPENINSULA COMMUNITY MEDIA CENTER, INC.
FOR PUBLIC, EDUCATION AND GOVERNMENT ACCESS CHANNEL SUPPORT SERVICES

This Amendment No. 2 to Contract No. C12142180 ("Contract") is entered into December 11, 2018, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and MIDPENINSULA COMMUNITY MEDIA CENTER, INC., a California nonprofit corporation, located at 900 San Antonio Rd, Palo Alto, CA 94303 ("CONSULTANT").

R E C I T A L S

A. The Contract was entered into between the parties for the provision of public, education and government access channel support services.

B. CITY intends to extend the term to June 30, 2019.

C. The parties wish to amend the Contract.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. Section 2 TERM is hereby amended to read as follows:

"SECTION 2. TERM. The term of this Agreement shall be from December 31, 2018 through June 30, 2019, unless terminated earlier pursuant to Section 19 of this Agreement."

SECTION 2. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

MIDPENINSULA COMMUNITY MEDIA CENTER, INC.

DocuSigned by:
Sue Purdy Pelosi
247E365D839A44D...
Sue Purdy Pelosi
President

APPROVED AS TO FORM:

Certificate Of Completion

Envelope Id: 059E0DB0DA9E41088D88A6B354D59602		Status: Completed
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Signing Complete	Security Checked	12/11/2018 2:09:12 PM
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Payment Events	Status	Timestamps